Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2021	)	ET Docket No. 21-190
	)	

COMMENTS OF WI-FI ALLIANCE

Wi-Fi Alliance®[1/] submits these comments in response to the Notice of Proposed Rulemaking ("NPRM")[2/] in the above-referenced proceeding seeking comment on, among other things, the addition of new categories to the Commission's regulatory fee schedule. Wi-Fi Alliance strongly opposes proposals that would impose regulatory fees on manufacturers or distributors of devices, or providers of service, that use unlicensed spectrum. The Communications Act provides no basis for imposing those fees and doing so would create unnecessary costs on innovation that will hurt consumers.

I. INTRODUCTION AND SUMMARY

Devices and services that use unlicensed spectrum are a great Commission success story. As just one example, the Commission's decision to make available several small sections of spectrum for unlicensed use led to Wi-Fi – one of the most ubiquitous technologies in existence today.[3/] Wi-Fi is not only the predominant means by which Americans and others access the

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1/ Wi-Fi®, the Wi-Fi logo, the Wi-Fi CERTIFIED logo, Wi-Fi Protected Access® (WPA), WiGig®, the Wi-Fi ZONE logo, the Wi-Fi Protected Setup logo, Wi-Fi Direct®, Wi-Fi Alliance®, WMM®, and Miracast® are registered trademarks of Wi-Fi Alliance. Wi-Fi CERTIFIED™, Wi-Fi Protected Setup™, Wi-Fi Multimedia™, WPA2™, Wi-Fi CERTIFIED Passpoint™, Passpoint™, Wi-Fi CERTIFIED Miracast™, Wi-Fi ZONE™, WiGig CERTIFIED™, Wi-Fi Aware™, Wi-Fi HaLow™, the Wi-Fi Alliance logo and the WiGig CERTIFIED logo are trademarks of Wi-Fi Alliance.

2/ *Assessment and Collection of Regulatory Fees for Fiscal Year 2021*, Report and Order; Notice of Proposed Rulemaking, MD Docket No. 21-190, FCC 21-98 (rel. Aug. 26, 2021) ("*2021 Report and Order*").

3/ *Value of Wi-Fi*, WI-FI ALLIANCE (last visited Oct. 2, 2021), https://www.wi-fi.org/discover-wi-fi/value-of-wi-fi (roughly 4.2 billion Wi-Fi devices ship annually with roughly 16 billion devices currently in use).

Internet,[4/] but the Wi-Fi industry generates significant economic value.[5/] One of the reasons that Wi-Fi and other unlicensed technologies are successful is the Commission's "light-touch" regulatory approach. Except for necessary technical specifications and equipment approval processes, the Commission has wisely declined to impose regulations that would impede experimentation and innovation. As a result, use of Wi-Fi and other unlicensed technologies has changed the way people work, provide and receive healthcare, learn, and consume entertainment media.[6/]

The National Association of Broadcasters ("NAB")[7/] and State Broadcasters Associations ("State Broadcasters")[8/] (collectively "Broadcasters") would have the Commission threaten future innovation by imposing fees on services that use unlicensed spectrum and entities that manufacture and distribute devices that use unlicensed spectrum.[9/] The Broadcasters' proposals

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4/ *Discover Wi-Fi*, WI-FI ALLIANCE, (last visited Oct. 5, 2021), https://www.wi-fi.org/discover-wi-fi (stating "Wi-Fi is [t]he primary medium for global internet traffic."); *Value of Wi-Fi*, *supra* note 3 (stating that there are more than 500 million global public Wi-Fi access points and over 60% of all mobile Internet traffic is offloaded to Wi-Fi).

5/ *Value of Wi-Fi*, *supra* note 3 (stating that in 2021 the estimated value of Wi-Fi across the globe is $3.3 trillion and by 2025 will increase to nearly $5 trillion).

6/ *See Wi-Fi is Essential for Remote Working, Learning, and Playing*, INTEL (last visited Oct. 2, 2021), https://www.intel.com/content/www/us/en/products/docs/wireless/essential-for-remote-working-learning-playing.html ("Wi-Fi is now the primary method for the remote workforce, students, and families to connect"); *see also Wi-Fi CERTIFIED 6™ in Healthcare*, WI-FI ALLIANCE (last visited Oct. 2, 2021), https://www.wi-fi.org/download.php?file=/sites/default/files/private/Wi-Fi_6_in_Healthcare.pdf (noting several healthcare use cases for Wi-Fi such as patient monitoring, scheduling medicine delivery, imaging, and telemedicine); *see also Wi-Fi® in Education*, WI-FI ALLIANCE (last visited Oct. 2, 2021), https://www.wi-fi.org/download.php?file=/sites/default/files/private/Wi-Fi_in_Education_0.pdf (showing that Wi-Fi is changing education and allowing for new classroom innovations).

7/ *See* Comments of the National Association of Broadcasters, MD Docket No. 21-190, at 12-13 (filed June 3, 2021) ("NAB Comments").

8/ *See* Joint Reply Comment of State Broadcasters Associations, MD Docket No. 21-190, at 21-22 (filed June 21, 2021) ("State Broadcaster Comments").

9/ Notably, NAB does not explain which entities or types of entities should be assessed regulatory fees as "users of unlicensed spectrum." In the instances where NAB does identify any entity by name – Microsoft, Apple. Google, and Facebook – it does not attempt to explain how those entities' "use" of unlicensed spectrum is different from millions of other similar services such as other websites or applications – including those of many broadcasters themselves that are accessed through unlicensed spectrum. *See* NAB Comments at 12-13;

would alter the Commission's methodology for determining regulatory fees by allocating a portion of the Office of Engineering and Technology's ("OET") regulatory activity costs to manufacturers and distributors of devices using unlicensed spectrum and entities that offer services using unlicensed spectrum. Wi-Fi Alliance appreciates that the Commission has already recognized why this is an unsound approach, for example by noting that (i) OET – which has the lead role in regulating the use of unlicensed devices – is not a "core Bureau" because it provides services to industries regulated across the agency, (ii) manufacturers and distributors of devices that use unlicensed spectrum do not receive uniform benefits from OET's regulatory activities, and (iii) administration of a such a fee would be practically impossible.[10/] The Commission should affirm those conclusions and acknowledge the additional rationale presented below to strongly reject the Broadcasters' proposals to impose regulatory fees on devices and services that use unlicensed spectrum.

II. THE COMMISSION HAS HISTORICALLY TAKEN THE CORRECT APPROACH TO REGULATORY FEES BY DECLINING TO IMPOSE FEES ON DEVICES AND SERVICES USING UNLICENSED SPECTRUM

The Commission has consistently and correctly interpreted the Communications Act to require it to calculate and assess regulatory fees using a methodology that "reflect[s] the full-time equivalent [("FTE")] number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."[11/] Pursuant to this methodology, the Commission calculates its regulatory fees by "determining the number of direct FTEs in each

see generally Reply Comments of National Association of Broadcasters, MD. Docket No. 21-190, at 4-5 (filed June 18, 2021).

10/ *See 2021 Report and Order* ¶¶ 23-25; *see also id.* at n. 68.

11/ *2021 Report and Order* ¶ 22 (citing 47 U.S.C. § 159(d)).

core bureau and proportionally attributing all other indirect FTEs based on these core FTE allocations."[12/] Historically, the Commission has not considered OET a "core" bureau for purposes of assigning FTE allocations and has treated its work as "indirect."[13/] Accordingly, the Commission distributes OET's FTEs proportionally across all core bureau allocations for which all payors of regulatory fees are responsible.[14/]

Declining to consider OET a core bureau for purposes of capturing the cost of its FTEs from manufacturers and distributors of devices that use unlicensed spectrum, and entities whose services use unlicensed spectrum continues to be the correct approach. As the Commission notes, while OET may have the primary role in "regulating" the deployment of unlicensed devices, that is not all OET does. To the contrary, OET plays a critical role in assessing the propriety of rules in licensed services and even provides input to the Enforcement Bureau in cases of spectrum interference.[15/] In fact, as the Commission highlights, "part of OET's role is to participate in matters not within the jurisdiction of any single bureau or affecting more than one bureau."[16/] Thus, continuing to treat OET's FTEs as indirect remains appropriate.

NAB argues that the D.C. Circuit's decision in *Telesat v. FCC*,[17/] supports the expansion of regulatory fees to "Big Tech and other unlicensed spectrum users."[18/] But, even if the

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12/ *Id.* ¶ 22.

13/ *Id.* ¶ 23.

14/ *Id*.

15/ *Id.*; *see also* Laboratory Division, *What We Do*, OFFICE OF ENGINEERING AND TECHNOLOGY (last visited Oct. 4, 2021), https://www.fcc.gov/general/laboratory-division ("The Laboratory Division designs test procedures for compliance of equipment subject to the Commission regulations and conducts tests to determine if equipment complies with applicable technical rules, procedures and standards.").

16/ *2021 Report and Order* ¶ 23 (internal quotations omitted).

17/ *Telesat Canada v. Federal Communications Commission*, 999 F.3d. 707 (D.C. Cir. 2021)

18/ Reply Comments of National Association of Broadcasters, MD Docket No. 21-190, at 4-5 (filed June 18, 2021).

Commission adopted the Broadcasters' too-expansive reading of *Telesat* – that the conferring of "benefits" is the most material consideration when assessing regulatory fees – applying that rationale here would still be problematic.

As an initial matter, NAB does not explain how its ill-defined targets "use" Commission resources. To the extent it means, as the State Broadcasters suggest, that regulatory fees should be imposed on manufacturers and distributors of devices that use unlicensed spectrum, the Commission has already explained that not all devices operating on unlicensed spectrum require equipment authorization, and even among those devices that do, different devices are authorized differently.[19/] In particular, some devices that use unlicensed spectrum are subject to an equipment authorization process that fully engages the Commission's staff, while others are subject to a process that primarily involves third-party labs and Telecommunications Certifications Bodies ("TCBs"), and yet others may only require self-authorization or no authorization at all.[20/] Therefore, even though each type of device operates on unlicensed spectrum they obtain completely different levels of "benefits" from OET.

Those distinctions highlight why the Court's rationale in *Telesat* does not apply to equipment manufacturers and distributors. In that case, the Court observed that both foreign and domestic satellite operators both required some type of approval from the Commission – market access for foreign-based providers and a Commission license for domestic providers. Further, the Court relied on findings that foreign-licensed satellites with U.S. market access "benefit from the Commission's oversight and regulation in the *same manner* as U.S. licensed satellites."[21/] In contrast, as noted above, manufacturers and distributors of different devices using unlicensed

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19/ *See 2021 Report and Order* ¶ 24; *id.* at n.66.

20/ *Id.* ¶ 24; *see also* 47 C.F.R. §§ 2.906, 2.907.

21/ *Telesat*, 999 F.3d. at 710 (emphasis added).

spectrum do not receive the same benefits from the Commission's regulatory activity, and in many cases the benefits that manufacturers and distributors of unlicensed devices *do* receive is actually conferred by a TCB, not the Commission.

This disparity is further highlighted by the provision of the Communications Act that provides the Commission with authority to revoke "any instrument of authorization held by a licensee" that does not timely pay a regulatory fee. While the *Telesat* Court would presumably interpret a "licensee" to include foreign satellite operators granted market access to avoid unequal treatment between domestic and foreign providers, there is no similar parallel among different classes of unlicensed devices. Some manufacturers obtain Commission equipment authorizations (although in most cases through a TCB), while for others, there is no "license" of any kind to revoke, resulting in potentially unequal treatment among manufacturers of devices that use unlicensed spectrum. The disparity is even more pronounced between manufacturers and distributors of devices that use unlicensed spectrum, the latter of which, as noted below, are not subject to direct Commission regulation.

Reliance on the *Telesat* Court's rationale of benefits parity is especially wrong with respect to NAB's assertion that providers of service using unlicensed spectrum should pay regulatory fees.[22/] As explained below, services offered using unlicensed services receive no protection, unlike services using licensed spectrum. Accordingly, any "benefit" they receive is unequal to services, like those provided by broadcasters that use licensed spectrum meaning the *Telesat* test fails.

22/ *See* NAB Comments at 13 (NAB vaguely argues that "Google, Apple, and Facebook and others reap the benefits of the Commission's regulatory activities at the expense of broadcasters" which it then claims is evidence that the fee system does not reflect the work of the Commission and should be updated.)

While the *Telesat* Court may have focused on a "benefits" approach, the Communications Act makes clear that a benefits analysis is only secondary in any case. As the Communications Act makes clear, amendments to the fee schedule are authorized *primarily* to reflect the FTE test.[23/] Once the FTE test is applied, the Commission is directed to adjust the result to take into account factors related to the payor of the fee.[24/] But, as noted above, the primary FTE test is difficult to administer with respect to OET because its work covers a myriad of industries and services. And even if the Commission could apply the secondary "benefits" adjustment, doing so would be difficult for the reasons noted above regarding the unequal regulatory treatment of devices and services using unlicensed spectrum.

III. THERE IS NO BASIS FOR DEPARTING FROM THE COMMISSION'S APPROACH AND ADMINISTERING THE PROPOSED CHANGES WOULD BE PROBLEMATIC

A. The Broadcasters Fail to Consider the Difference Between Licensed and Unlicensed Services

At the core of their proposal, the Broadcasters simply object to their members paying regulatory fees while manufacturers and distributors of devices using unlicensed spectrum and providers of services using unlicensed spectrum do not.[25/] The Broadcasters attempt to characterize these entities as reaping benefits from Commission regulation "at the expense of broadcasters."[26/] However, despite this mischaracterization, it is broadcasters, as users of licensed spectrum, who reap disproportionate benefits of Commission regulation. Indeed, in

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23/ *See* 47 U.S.C. § 159(d) (requiring the fee schedule first to "reflect the full-time equivalent number of employees within the bureaus and offices of the Commission").

24/ *See id.* (directing that only after the fees reflect the bureau and office FTEs should the amount of the fees be "adjusted to take into account factors that are reasonably related to the benefits provided by the payor of the fee by the Commission's activity").

25/ State Broadcaster Comments at 5-14, 21-23, n. 58; NAB Comments at 5-9, 10-14.

26/ NAB Comments at 13.

each of the examples highlighted in the Broadcasters' comments, and in any other case where broadcasters and unlicensed devices share spectrum, the Commission's rules and regulatory work is principally intended to protect licensed broadcast operations. For example, while the Commission permitted unlicensed devices to operate in the TV "white spaces," not only did the Commission adopt a number of technical rules designed to protect licensed broadcast interests,[27/] it delayed the marketing of TV white spaces to "avoid the possibility of disrupting or causing uncertainty in the DTV transition."[28/] And in the Microsoft "Airband" case noted by NAB, the Commission sought to promote broadband innovation by making targeted rule changes to Part 15, but also declined to permit certain unlicensed operations in an effort specifically designed to *protect* broadcast operations.[29/] In the Commission's 6 GHz proceeding, the agency specifically chose not to permit standard-power access points in the broadcast auxiliary service band because the Commission found that unlicensed devices would not be able to operate while still protecting licensed operations.[30/]

In contrast, services provided using unlicensed spectrum typically receive no interference protection. In fact, the Commission's rules explicitly provide that operation of devices using unlicensed spectrum authorized under Part 15 is "subject to the conditions that no harmful interference is caused and that interference must be accepted that may be caused by the operation of an authorized radio station, by another intentional or unintentional radiator, by industrial,

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27/ *See generally In the Matter of Unlicensed Operation in the TV Broadcast Bands, Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, Second Report and Order, 23 FCC Rcd. 16807, ¶¶ 1, 6-9 (2008) ("*White Spaces R&O*").

28/ *Id.* ¶ 3.

29/ *See Unlicensed White Space Device Operations in the Television Bands*, Report and Order, 35 FCC Rcd. 12603, ¶¶ 7-8, 16 (2020).

30/ *Unlicensed Use of the 6 GHz Band; Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Report and Order, 35 FCC Rcd. 3852, ¶ 93 (2020).

scientific and medical (ISM) equipment, or by an incidental radiator."[31/] Thus, even when the Commission permits the operation of service using unlicensed spectrum, it does so subject to this baseline qualification – *i.e.* without interference protection like broadcasters enjoy. As a consequence, manufacturers and distributors of devices and providers of services using unlicensed spectrum get substantially less "benefit" from the Commission's regulatory activity than licensed operations – even when the Commission seeks to promote unlicensed technology.

B. The Broadcasters' Proposal Fails to Specify Which Entities Should be Subject to Fees and How Those Fees Would Be Assessed and Collected

The Broadcasters' approach is also flawed because it is unclear which entities would be subject to fees or how the fees would be assessed and collected. As noted above, not all devices using unlicensed spectrum require the same type of regulatory approvals. Further, the State Broadcasters propose to assess regulatory fees on unlicensed device "manufacturers and distributors."[32/] Manufacturers *may* receive equipment authorizations and be considered "licensees", but as noted above, sometimes do not. But distributors are not licensees at all and, at best, are only regulated by the Commission indirectly and so could not be afforded the same treatment as "licensees" under the Communications Act.

Indeed, in addition to entities that manufacture radiofrequency equipment that transmits on unlicensed spectrum, some other entities merely incorporate those devices into their products and neither the NAB nor State Broadcasters' proposals account for which entity allegedly receives any benefit from Commission regulation and should pay regulatory fees. Neither proposal addresses how the Commission could avoid collecting fees from multiple entities for the same devices. Instead, these proposals would create a cumbersome and onerous regulatory

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31/ 47 C.F.R. § 15.5(b).

32/ State Broadcaster Comments at 22.

fee structure that would be nearly impossible for the Commission to administer and would likely create confusing and absurd results for the subjects of those fees.

IV. CONCLUSION

For the foregoing reasons, the Commission should decline to impose regulatory fees on the manufacture or distribution of devices or provision of services that use unlicensed spectrum. Doing so by attempting to capture the cost of FTEs in OET would contravene the Commission's appropriate determination that OET provides services across all Commission-regulated services and that there is no uniform regulatory benefit afforded to manufacturers of devices using unlicensed spectrum. It would also fail to recognize that that there is no uniform regulatory benefit conferred on distributors of devices using unlicensed spectrum and that providers of service using unlicensed spectrum do not receive the same benefit as entities using licensed spectrum to provide service.

Respectfully submitted,

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